COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 14, 2001

APPLICATION OF

B & J ENTERPRISES, L. C. CASE NO. PUE990616

For a certificate of public convenience and necessity to operate a sewerage utility

ORDER

The Commission entered its final Order in this matter on March 20, 2001, granting B & J Enterprises, L.C. ("B&J" or "Company"), a certificate of public convenience and necessity to provide sewer service in the Country Club Estates, Montgomery County, Virginia, and approving the rates, charges, fees, and terms and conditions of the Company's service.

On April 10, 2001, B&J filed a Petition for Reconsideration, asking that the Commission: (1) clarify that it may use portions of the connection fee approved in the March 20, 2001 Order for purposes of debt retirement; and (2) clarify or reconsider the Company's request to collect a connection fee from certain designated lot owners. We entered our Order on Reconsideration, also on April 10, 2001, to preserve our jurisdiction in the matter in order to permit full consideration of B&J's request. Finally, on April 20, 2001, Protestant Joan G. Moore filed her "Comments on

Reconsideration," together with a request the we grant leave for the filing of the comments. We will grant this request and permit the filing of the comments, which we have read and considered, into the record herein.

As the parties are well aware, and as our March 20 Order reflects, this has been a uniquely complicated proceeding, owing in large measure to the contract under which the current owners of the sewer system acquired it. B&J obligated itself by this contract to undertake certain development activities, including extension of the existing sewer system, in return for receipt of enumerated parcels of developed and undeveloped real estate.

The record here reflects that the Company has largely completed the required construction, and that most every lot in the Country Club Estates now has sewer service available. B&J initially proposed an extraordinary connection fee of $17,500 for lot owners desiring to connect to its system. We rejected even interim application of this fee. During the course of the proceedings, the Company reduced its proposed fee to $3,500 and then to $2,500, to be applicable to every unconnected lot.

In our March 20 Order we rejected the recommendations of the Hearing Examiner with regard to the connection fee. Instead, we found that since the Company's contract obligated it to extend service to certain of the lots in exchange for the real property it acquired, no fee should be collected from these lot owners. We did approve a connection fee of $5,000 for those

lots to which the Company had extended service, but which the contract did not impose this obligation. The proceeds so collected were to be held in escrow and used solely for system improvement and replacement.

The Company now asks us to allow it to use the proceeds of the approved fee for debt repayment, arguing that it "borrowed sizable amounts in order to complete the sewer infrastructure essentially at one time in the most cost-efficient manner that was also the least disruptive to the homeowners." This refers to the Company having installed not just sewer mains, but service laterals to each lot during the construction. It argues that the permitted connection fee "should be used to reduce the debt incurred to install the laterals, and, if all debt is eliminated, then the amounts collected would be escrowed for future improvements."

We will deny this request. The record is insufficient to permit us to conclude, as B&J asserts, that it "borrowed sizable amounts in order to complete the sewer infrastructure . . .." The record shows that the Company's principals did make certain borrowings, but does not permit a finding as to which, if any, of these borrowed funds were used for the sewer and which were used for road construction, bridge construction, or other development activities. We will direct the Company to maintain the escrow for the purposes stated in the March 20 Order, but

allow it to supplement the record on this point at its next rate proceeding.

However, we caution the Company that we do not here conclude that we will grant its request even if an appropriate record can be made tracing the funds into the sewer construction. It will still bear the burden to demonstrate why it should receive what would appear to be a full return of its investment, and, essentially, a complete transfer of investment risk to its customers.

As to B&J's second request, we have reconsidered our previous holding and will allow it to collect a capital contribution, in the reduced amount of $2,500, from owners of the lots individually owned at the time the Company acquired the system under the contract. This one-time contribution will not be collected until a lot owner actually seeks to connect to the Company's system. While the law does not require approval of this payment, we are persuaded by the arguments advanced by both the Company and by Protestant Moore that it would be equitable to require each lot owner in the Country Club Estates to make some capital contribution to help ensure the future viability of the system. We will direct the Company to retain these contributions in its escrow account, again to be used solely for system extension and improvement.

NOW THE COMMISSION, in consideration of the Petition for Reconsideration, and the Comments filed by Protestant Moore, and

in further consideration of the record herein, finds that the Company's request to make additional use of the escrowed funds should be DENIED, and its request to collect capital contributions, as set forth above, should be GRANTED.

Accordingly, IT IS ORDERED THAT:

(1) The Comments on Reconsideration submitted by Protestant Joan G. Moore are admitted to record.

(2) The Petition for Reconsideration is granted in part and denied in part as set forth herein.

(3) This matter is dismissed.